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Ms. Kathleen E. Brody
Legal Director
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REDACTED TO
EXCLUDE CERTAIN
STUDENT INFORMATION

Dear Ms. Brody:

This law firm represents the Mingus Union High School District (the "District"). The purpose of this letter is to respond to the letter you emailed to Acting Superintendent Genie Gee on December 28, 2018, which was shared with the media on that date.

Your letter incorrectly states the facts and the law. Moreover, there are cogent and sound reasons for the student identity badge policies.

1. The Student ID badges.

The badges at issue are student ID badges. Every student is required to wear one for security reasons. This is a common practice in school districts around the country. *See A.H. ex rel. Hernandez v. Northside Independent School Dist.*, 916 F.Supp.2d 757 (W.D. Tex, 2013). It allows the campus officials to determine who should and should not be on the campus.

The need for the use of student identity badges has been recognized by the United States Department of Education, ("DOE") which has enacted a regulation under the Family Educational Privacy Rights Act ("FERPA"). The DOE has adopted a regulation that does not allow a parent to "opt out" of requiring students to wear ids containing directory information. *See* 34 Code of Federal Regulations (C.F.R.) §99.37.

In this case, the District's student identity badge policy is based upon its determination that it is necessary for educational and security reasons.

2. The color of the badges.

The color of the badges is derived from the Mingus Union High School ("School") colors, which are red and gray. The red color is used for freshmen and sophomores and the grey is used for juniors and seniors. Thus, any characterization of the badges as a "scarlet" letter that

implies the use of the color is punitive is misleading. Had the school colors been green and gold, the badges would have those colors.

The differentiation in colors is because juniors and seniors have different privileges, such as being allowed to go off campus for lunch. For security reasons, the different colors allow campus officials to quickly determine whether a student is legitimately exiting campus. It also assists campus officials to determine whether the students are in right places. For example, there are assemblies and other events just for juniors and seniors.

3. Jordan's Status.

Jordan has a red identity badge because she does not have enough credits to be a junior. [REDACTED] To the extent that the number "11" is on her ID badge, the number will be taken off. [REDACTED] please note that her mother has never requested an accommodation in the past and the District had no reason to know she might need an accommodation under Section 504 of the Rehabilitation Act of 1973 ("Section 504") or Title II of the Americans with Disabilities Act of 1973 (the "ADA").

4. Grade level is directory information and Ms. Lansman has permitted disclosure of directory information.

Under FERPA, "grade level" is among the information classified as "directory information." 34 C.F.R. 99.3.¹ Directory information is public information that may be disclosed unless parents "opt out" or request that such information is not disclosed.

The School has a directory information form, which is attached as Exhibit A. "Grade level" is included in the School's definition of directory information.

Ms. Lansman has never opted out of the disclosure of directory information concerning her daughter. She is free to do so at any time. In that instance, the District will issue her daughter a student ID without a grade level designation, either in color or number.

5. ADA Accommodations.

Likewise, Ms. Lansman has never requested Section 504 or ADA accommodations for Jordan. Based on your letter, the District is currently setting a Section 504 meeting to address this and Ms. Lansman will receive notification of the meeting so that she can attend.

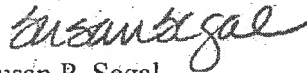
¹ "Directory information includes, but is not limited to, the student's name; address; telephone listing; electronic mail address; photograph; date and place of birth; major field of study; grade level; enrollment status (e.g., undergraduate or graduate, full-time or part-time); dates of attendance; participation in officially recognized activities and sports; weight and height of members of athletic teams; degrees, honors, and awards received; and the most recent educational agency or institution attended."

We will be supplementing this response with further information as soon as we receive it.

Moreover, the District and its Governing Board will be addressing further possible measures, including a letter reminding parents that they can "opt out" and a sign out sheet for students whose identity badges do not contain a grade level designation.

However, the District denies that it has violated any laws or rights of the student as you have alleged in your letter. Should this matter go to court, the District will be presenting evidence of the need for the differentiation in the badges. Your colleague has argued that the students should not be required to wear badges or that the badges should not be in different colors. However, that determination is one for the District and its Governing Board—not the ACLU. And, as you are probably aware, courts are loathe to micromanage school districts. *See Kelly v. Martin*, 16 Ariz. App. 7, 9, 490 P.2d 836, 838 (1971).

Very truly yours,



Susan P. Segal
For the Firm

SPS/lb
Enclosure

Exhibit A

Mingus Union High School Student Directory Information Non-Release Form

During the school year, Mingus Union High School staff members may compile non-confidential student directory information specified below.

According to state and federal law the below-designated directory information may be publicly released to educational, occupational or military recruiting representatives without your permission. If the district governing board permits the release of the below-designated directory information to persons or organizations who inform students of educational or occupational opportunities, by law the district is required to provide the same access on the same basis to official military recruiting representatives for the purpose of informing students of educational and occupational opportunities available to them, unless you request in writing that the school not release the student's information without your prior signed and dated written consent. *If you do not object to the release of any and all of the below-designated information in writing, then the district must provide military recruiters, upon request, directory information containing the student's names, addresses, and telephone listings.*

If you do *not* want any or all of the below designated information about your son/daughter to be released to any person or organization without your prior signed and dated written consent, you must notify the district in writing by checking off any or all of the rejected information, signing the form at the bottom of this page, and returning it to the Counseling Office at time of enrollment. If the school district does not receive this notification from you with the prescribed time, *it will be assumed that your permission is given* to release your son/daughter's designated directory information.

TO: Registrar

I *do not* want any or all the information I have indicated below concerning (student's name) _____
designated as directory information and released to any person or organization without my prior written consent:

- | | |
|--|---|
| <input type="checkbox"/> Name | <input type="checkbox"/> Address |
| <input type="checkbox"/> Telephone Listing | <input type="checkbox"/> Electronic mail address |
| <input type="checkbox"/> Date and place of birth | <input type="checkbox"/> Photograph |
| <input type="checkbox"/> Dates of attendance | <input type="checkbox"/> Grade level |
| <input type="checkbox"/> Enrollment status (e.g. part time or full time) | <input type="checkbox"/> Weight and height (members of athletic teams) |
| <input type="checkbox"/> Major field of study | <input type="checkbox"/> Participation in officially recognized activities/sports |
| <input type="checkbox"/> Honors and awards received | <input type="checkbox"/> Most recent educational agency or institution attended |

Parent/Guardian Signature

Date